IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 262

GOODALL-SANFORD, INC.
DEFENDANT-APPELLANT, *Petitioner*

vs.

UNITED TEXTILE WORKERS OF AMERICA, A. F. L. LOCAL 1802, AND UNITED TEXTILE WORKERS OF AMERICA, A. F. L.
PLAINTIFFS-APPELLEES, *Respondents*

BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

CITATIONS

Statutes, Texts, etc.: PAGE

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BRIEF FOR DEFENDANT-APPELLANT, PETITIONER

OPINIONS BELOW

The opinion of the District Court is reported in 131 Fed. Supp. 767 and is set forth in full R. 39-49, inc. The opinion of the Court of Appeals is reported in 233 F. 2d 104 and is printed in full, R. 57-69.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C.A. Par. 1254 (1).

QUESTIONS PRESENTED

1. Whether Section 301 of the Labor Management Relations Act of 1947 granted to the District Courts of the United States jurisdiction where no other ground for Federal jurisdiction is alleged or claimed.

2. Whether Section 301 of the Labor Management Relations Act of 1947 granted to the District Courts of the United States equitable jurisdiction to grant injunctions or compel specific performance of arbitration clauses in a collective bargaining agreement.

3. Whether the District Court has jurisdiction to decree specific performance of an agreement to arbitrate such a dispute, despite the prohibitions of the Norris-LaGuardia Act.

4. Whether the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. is applicable to an agreement to arbitrate in a collective bargaining agreement.

5. Whether a union may prosecute, by way of arbitration procedure in a collective bargaining agreement, the peculiarly personal rights of individual employees to recover vacation pay, and judicially compel arbitration for that purpose.

6. The appealability of an order granting specific performance of an arbitration covenant.

STATUTES INVOLVED

The Statutes involved are the United States Arbitration Act, 61 Stat. 669; Sec. 1 et seq. (1947) as amended September 3, 1954, 68 Stat. 1233, 9 U.S.C. Sec. 1 et seq., the Labor Management Relations Act, 61 Stat. 136 (1947) 29 U.S.C.

141 et seq. and the Norris-LaGuardia Act, 47 Stat. 70 (1932) 29 U.S.C. 101, et seq. Judicial Code 28 U.S.C.A. Sec. 1291, 1292. These statutes are set forth more fully in Appendix A.

STATEMENT OF THE CASE

The statement of the case, as presented in the District Court, is printed R. 39-46, inc. and as presented to the Court of Appeals is printed R. 58-59, inc.

The case involves a petition by a labor organization to the United States District Court for the District of Maine, Southern Division, to compel specific performance of the arbitration provisions of a collective bargaining agreement between United Textile Workers of America, A. F. L. local 1802, and United Textile Workers of America, A. F. L. Plaintiffs, and Goodall-Sanford, Inc., Defendant.

The dispute arose when the Union protested the action of the Company in terminating employment of employees then on lay-off status when, because of heavy losses, the defendant corporation had decided to terminate all operations and had inaugurated a program of complete liquidation of the mill properties.

The defendant refused the demand of the Union for arbitration of the dispute on the ground that the discontinuance of operations for business reasons and the termination of employment incident thereto was a prerogative of management and the dispute was, therefore, not arbitrable under the collective bargaining agreement.

Termination of all production operation of the mills and the sale of all real estate and buildings had been completed by April 5, 1955, approximately two months prior to the date of decision in the District Court.

The pertinent articles of the collective bargaining agreement are, by stipulation, set forth in full in Exhibit A (R. 25-31, inc.) and pertinent provisions thereof are quoted in the opinion and order of the District Court of June 1, 1955, R. 41-43 and, in the opinion of the Court of Appeals, R. 61 and 62, 64 and 66.

The only ground for jurisdiction of the District Court alleged in the original and amended complaint is Section 301 of Title III of the Labor-Management Relations Act of 1947, 29 U.S.C. Sec. 185.

The District Court denied defendant's motion to dismiss the amended complaint, R. 4 and, on June 1, 1955, denied the defendant's motion to dismiss the complaint, as further amended, R. 5. On June 1, 1955 the District Court entered an opinion and order, granting Plaintiffs' motion for summary judgment R. 39-49 and, on June 13, 1955, entered a decree directing arbitration of the dispute R. 49-51. An appeal to the Court of Appeals for the First Circuit was seasonably perfected by the Defendant from the denial of the Defendant's motion to dismiss and the granting of the Plaintiffs' motion for summary judgment and the decree thereon. R. 51.

No claim was made in the Plaintiffs' original or amended pleadings in the District Court that the Plaintiffs were demanding the relief of specific performance under the United States Arbitration Act, and no allegation or proof of compliance by the Plaintiffs with the requirements of said Act was made. The decision of the District Court was bottomed squarely on its interpretation of the provisions of Section 301, Labor-Management Relations Act, as granting to that Court jurisdiction to grant the relief of specific performance of the arbitration provisions of the collective bargaining agreement.

At no time, in the District Court or in the Court of Appeals, either in the written briefs or in oral argument, was any claim made by the Plaintiffs that relief was sought under the United States Arbitration Act, or that the provisions of that Act had been complied with by the Plaintiffs.

The Court of Appeals disagreed with the District Court as to its authority to compel arbitration under Sec. 301 (R. 61) alone and held (a) that the United States Arbitration Act applied to the controversy (b) that the Defendant had waived compliance by the Plaintiffs with the requirements of the Arbitration Act. (R. 62), (c) that as there was no controverted issue of material fact, summary judgment was the appropriate vehicle for decision (R. 62) and (d) that an arbitrable issue was presented on the facts in the case (R. 69). On April 25, 1956 the Court of Appeals rendered its opinion, affirming the decree of the District Court (R. 57-69) and, on the same day, entered judgment (R. 71) and, on May 9, 1956, stayed the mandate until further order of Court (R. 71).

On October 8, 1956, this Court granted certiorari limited to Questions numbered 1-5, as hereinbefore enumerated, and to the question raised by the respondents, namely, the appealability of an order granting specific performance of an arbitration covenant, hereinbefore numbered Question 6, (R. 71-72). This Question 6 was not raised in the Court of Appeals.

SUMMARY OF ARGUMENT

As jurisdiction is claimed solely under Section 301 of the Labor-Management Relations Act of 1947 and there is no diversity of citizenship, the constitutional grant of jurisdiction must find support under the federal question provision

of Section 2 of Article III of the Constitution. It cannot be justified under Article I.

Assuming a constitutional grant of jurisdiction under Section 301, the grant should not be construed as a direction to the Federal Courts to fashion a Federal common law of its own, applicable to collective bargaining agreements, but at most as a direction to apply state law, and the substantive law of Maine does not permit specific enforcement of agreements for final and binding arbitration of future disputes.

Section 301 should be construed as granting to the District Courts authority to entertain actions for money damages only and in no event should it be construed as authorizing an injunction or suit for specific performance.

Section 301 did not, pro tanto, repeal the prohibitions of the Norris-LaGuardia Act against the granting of injunctions by the District Courts in cases involving or growing out of a labor dispute and the plain and unambiguous interdictions of Section 7 leave no room for any interpretation other than the plain meaning of the words used.

An action under Section 4 of the Arbitration Act is not maintainable because:

(a) The jurisdictional requirement of Title 28 is not met.

(b) The legislative history compels the conclusion that the Arbitration Act is not applicable to labor disputes at all.

(c) Collective bargaining agreements were intended to be excluded by the language of the exclusionary clause in Section 1.

Section 301 having already been construed as not granting to the Union authority to enforce the individual rights of an employee to recover for services performed, it should

not now be construed as permitting the Union to accomplish the same result by a judicially enforced arbitration.

The order granting specific performance of the arbitration clauses of the collective bargaining agreement in this case was appealable.

ARGUMENT

QUESTION NO. 1

WHETHER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947 GRANTED TO THE DISTRICT COURTS OF THE UNITED STATES JURISDICTION WHERE NO OTHER GROUND FOR FEDERAL JURISDICTION IS ALLEGED OR CLAIMED.

Even if Section 301 is held to be, though a mere procedural direction, a constitutional grant of jurisdiction to federal courts over a contract governed by state law, Maine law does not permit specific enforcement of agreements requiring the submission of future disputes to final and binding arbitration.

Justice Frankfurter in his opinion in *Association* v. *Westinghouse Electric Company*, 348 U.S. 437, 99 L. ed. 510 concludes that nothing in the Taft-Hartley Act suggests the general application of federal substantive law in actions arising under Section 301 and that Section 301 is a mere procedural provision. Since Section 301 expressly eliminates the requirement of diversity of citizenship a question arises as to whether Section 301 satisfies the requirements of the so-called federal question clause of Section 2 of Article III of the Constitution, which provides that the judicial power shall extend to all cases arising under the laws of the United States. Some of the lower courts have tried to circumvent the lack of a body of federal substantive law with

respect to collective bargaining agreements by holding that Section 301 itself is a direction to develop a federal common law in connection with the rights of the parties. See e. g. *Shirley-Herman Co.* v. *Local No. 210*, 2 Cir. 1950, 182 F. 2d 806, 17 A.L.R. 2d 609. Justice Frankfurter's opinion in the Westinghouse case at 348 U.S. 437, 452; 99 L. ed. 510, 521 disposes of this argument by setting forth some of the difficult problems of choice in matters of "delicate legislative policy" which would be required if Section 301 were construed as such a direction.

If, then, Section 301 is to be held constitutional, analogies would have to be found to two other lines of decisions where jurisdictional grants were upheld despite the fact that state substantive law was controlling and diversity jurisdiction did not exist.

The first line began with *Osborn* v. *Bank of the United States*, 9 Wheat. 738 (1824) in which the Supreme Court upheld a grant of federal jurisdiction over all suits to which the bank was a party including suits which did not involve the interpretation of the statute creating the bank and which were governed by state commercial law. The court found what it called the "ingredient" necessary for federal jurisdiction in the Federal Charter creating the Bank which is a law of the United States.

The second line of decisions is concerned with that part of the Bankruptcy Act which provides that, in specific circumstances, plenary suits by a trustee in bankruptcy to recover on rights of action which were originally the bankrupt's may be brought in a district court (and not necessarily the one in which the bankruptcy proceedings are pending) and even though the cause of action sued upon is generally a creation of state law. *Schumacher* v. *Beeler*, 293 U.S. 367, 79 L. ed. 433.

The federal ingredient in the bankruptcy cases is the passing of the entire title of the bankrupt to all his non-exempt property and rights of action, by operation of federal law, from the bankrupt to the trustee. See Judge Denison's opinion at page 641 in *Toledo Fence & Post Co.* v. *Lyons*, 6 Cir. 1923, 290 F. 637.

In these two lines of decisions, therefore, the federal ingredient which satisfies the federal question clause of Article III, despite the absence of any body of federal substantive law, is clear. Without the federal charter creating it, the Bank would have no standing to sue in any court, federal or state. Without the vesting in the trustee of the bankrupt's title under the Bankruptcy Act, the trustee would have no standing to sue in any court, federal or state. In either case the suit is brought by one who owes his existence to a federal law.

No such a federal ingredient exists in the federal labor relations laws. Employers and labor organizations can sue each other on their contracts in both federal and state courts provided the necessary jurisdictional and procedural requirements are met and their right to sue does not depend upon any federal law. They have standing to sue without any federal law; they do not owe their existence to a federal law.

In fact, the contract in this case was made in Maine between a labor organization operating in Maine and a Maine corporation as the employer and there is nothing whatever about the contract which brings the federal law into predominance.

A majority of the Supreme Court in *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U.S. 582, 93 L. ed. 1556, has specifically rejected the theory that Con-

gress has the power, by reason of its legislative powers under Article I, without reference to Article III, to grant jurisdiction to the federal courts. Article I legislative powers are not, therefore, enough to satisfy the requirements for federal question jurisdiction; it seems doubtful that a mere exercise of these Article I legislative powers, without the creation of the necessary federal ingredient, is sufficient to satisfy such requirements, however much Congress may want to protect its legislation in the area.

Assuming that Section 301 is a constitutional grant to the federal courts, the question is whether we look to federal or state sources to determine the availability of specific enforcement as a remedy for breach of a promise to arbitrate.

In *Bernhardt* v. *Polygraphic Co.*, 100 L. ed. 199; 350 U.S. 198 (1956) this Court set forth at 100 L. ed. 203, 205; 350 U.S. 198, 203 that the remedy by arbitration substantially affects the cause of action created by the state and so the state law, not the law of the forum, applies. Arbitrators don't have the benefit of judicial instruction on the law; they need not give reasons for their decisions; the record is not so complete as it is in a court trial; judicial review of an award is more limited than judicial review of a trial; in other words, the use of arbitration procedure for the settlement of a dispute may well affect the substantive rights of the parties.

There is no valid distinction, as was attempted to be made by the Court in *Local 205, U.E.* v. *General Electric Co.*, 1 Cir. 1956, 233 F. 2d 85, 95, between the case at bar and the *Bernhardt* case on the ground that the latter was a diversity case subject to the rule of *Erie R. R. Co.* v. *Tompkins*, 304 U.S. 64 (1938). As pointed out above, this was a contract made in Maine between a labor organization operating in Maine and a Maine corporation as the employer and if any federal law is at all involved, it is not in the forefront; there is, therefore, more reason to apply Maine substantive law to this contract than in an ordinary diversity case.

Assuming then that Section 301 is a constitutional grant to the District Courts to apply state substantive law to collective bargaining agreements in industries affecting commerce, Maine law does not permit specific enforcement of agreements requiring the submission of future disputes to final and binding arbitration.

A provision in a contract for final binding arbitration of a future dispute is not legally enforceable under the law of Maine. *Conant* vs. *Arsenault*, 119 Maine 411, 111 A. 578, *Dugan* vs. *Thomas*, 79 Maine 221, 9 A. 354.

Under the law of Maine, even the agreed submission to arbitration of an existing dispute is revocable by either party at any time before award. *Clark* vs. *Clark*, 111 Maine 416, 89 A. 454. *Brown* vs. *Leavitt*, 26 Maine 251. *Cumberland* vs. *North Yarmouth*, 4 Maine 462. *Lebel* vs. *Cyr*. 140 Maine 98, 34 A. 2d 201.

Lewiston Auburn Shoeworkers vs. *Federal Shoe Inc.*, 150 Maine 432, 114 A. 2d 248 (1955) does not aid the plaintiffs. That case simply holds that a party who had agreed to arbitrate an existing dispute cannot withdraw after full hearing and after a majority of the arbitrators have indicated their decision.

QUESTION NO. 2.

WHETHER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947 GRANTED TO THE DISTRICT COURTS OF THE UNITED STATES EQUITABLE JURISDICTION TO GRANT INJUNCTIONS OR COMPEL SPECIFIC PERFORMANCE OF ARBITRATION CLAUSES IN A COLLECTIVE BARGAINING AGREEMENT.

The purpose of 301 was to impose a liability on a union for money damages for breach of a collective bargaining

agreement and to protect the union members from personal liability for a judgment for damages and to provide a vehicle by which the union could be sued for damages in a federal district court. This is borne out by Justice Frankfurter's statement in *Association* v. *Westinghouse Electric Company*, 348 U.S. 437, 443; 99 L. ed. 510, 515 and by Senator Taft's statement in 93 Cong. Rec. 3955 on April 23, 1947 which are both here quoted.

Justice Frankfurter—

> "If the section is given the meaning its language spontaneously yields, it would seem clear that all it does is to give procedural directions to the federal courts. "When an unincorporated association that happens to be a labor union appears before you as a litigant in a case involving breach of a collective agreement," Congress in effect told the district judges, "treat it as though it were a natural or corporate legal person and do so regardless of the amount in controversy and do not require diversity of citizenship." "

Senator Taft—

> "Mr. President, title III of the bill, on page 53, makes unions suable in the Federal courts for violation of contract. As a matter of law unions, of course, are liable in theory on their contracts today, but as a practical matter it is difficult to sue them. They are not incorporated; they have many members; in some states all the members must be served; it is difficult to know who is to be served. But the pending bill provides they can be sued as if they were corporations and if a judgment is found against the labor organization, even though it is an unincorporated association, the liability is on the labor union and the labor-union funds, and it is not on the individual members of the union where it has fallen in some famous cases to the great financial distress of the individual members of labor unions."

As set forth in Justice Frankfurter's analysis of the legislative history of Section 301 in *Association* v. *Westing-*

house Electric Co., 348 U.S. 437, 444; 99 L. ed. 510, 516, congressional concern with obstacles surrounding union litigation began to manifest itself as early as 1943. This concern eventually resulted in the independent introduction in the 80th Congress of Section 302 of H.R. 3020 and Section 301 of S 1126 each of which contained paragraphs which closely resemble Section 301, as finally passed, except Section 302(e) of H.R. 3020 which read as follows:

> "(e) In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes", shall not have any application in respect of either party."

The two bills were referred to a joint committee and the present Section 301 represents that committee's compromise which was passed over a presidential veto.

At the time of the taking up in the Senate of the compromise Section 301 and of the joint committee report on the disagreeing votes of the two houses, Senator Taft presented a detailed analysis of the compromise bill which eventually passed and stated, at 93 Cong. Rec. 6443 (Bound), June 5, 1947:

> "When the bill passed the Senate it also contained a sixth paragraph in this subsection which made it an unfair labor practice for an employer to violate the terms of a collective-bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration. The House conferees objected to this provision on the ground that it would have the effect of making the terms of every collective agreement subject to interpretation and determination by the Board, rather than by the courts. The Senate conferees ultimately agreed to its elimination as well as the deletion of a similar provision contained in

subsection 8(b)(5)w. . The provisions of the Senate amendment which conferred a right of action for *damages* upon a party aggrieved by breach of a collective-bargaining contract, however, were retained in the conference agreement (Section 301). If both provisions had remained, there would have been a probable conflict of remedies and decisions."

President Truman states, U. S. Code Congressional Service, 80th Congress, First Session, 1947, at page 1854:

"In introducing *damage* suits as a possible substitute for grievance machinery, the bill rejects entirely the informed wisdom of those experienced in labor relations."

Thus Senator Taft, one of the architects of the bill which bears his name, and President Truman, whose detailed treatment of the bill in his veto message indicated a careful study of it, both analyze Section 301 as being limited to suits for money damages.

Their respective analyses are borne out by both the legislative history and the act itself.

Beginning with the passage of the Norris-LaGuardia Act in March 1932, 47 Stat. 70, 29 U.S.C.A. Section 101 et seq., Congress instituted a policy of limiting the jurisdiction of the District Court in cases involving labor disputes. The purpose and effect of that legislation was to deprive the federal courts of jurisdiction to interfere by injunction with labor disputes except in a very limited class of cases. As set forth in *W. L. Mead, Inc.* v. *International Brotherhood, etc.* 1 Cir. 1954, 217 F. 2d 6, 9, it is an accepted canon of construction that repeals by implication are not favored especially if the earlier enactment is a significant piece of legislation.

That Congress was, at the time of the passing of Section 301 aware of this policy against judicial interference in

labor disputes, is clear from the many comments made in both the Senate and the House and from the express designations in the Act itself as to the specific circumstances under which Federal District Courts may issue injunctions in labor disputes. Sections 10(e), 10(j) and 10(l) of the Act authorize the Board or its agents to petition for restraining orders and injunctions; in Section 10(h) it was provided that, when granting appropriate temporary relief or a restraining order or making a decree enforcing an order of the Board, the jurisdiction of the courts sitting in equity should not be limited by the provisions of the Norris-LaGuardia Act. But this departure from Norris-LaGuardia is sanctioned only where the Board was seeking enforcement of its orders or an aggrieved party was seeking review of a court order. Section 208 authorizes the Attorney General to petition to enjoin strikes imperiling the national safety and Section 208 expressly makes the provisions of the Norris-LaGuardia Act inapplicable. The provisions of the Norris-LaGuardia Act are also made inapplicable to the Section 302(e) provisions for restraining violations of Section 302, which is concerned with restrictions on payments to employee representatives.

These specific references to injunctions and to the Norris-LaGuardia Act at the minimum indicate that the Norris-LaGuardia Act was not pro tanto repealed by 301, and that injunctions were not to be included within the scope of the word "suits" in Section 301. They also support the conclusions of Senator Taft and President Truman. This conclusion is further reinforced by the elimination from the final Section 301 of Section 302(e) of the original House Bill 3020 which specifically provided that the Norris-LaGuardia Act would be inapplicable to the suits for breach of collective bargaining agreements permitted under Sec-

tion 302(a) of the House bill. If it had been the intention of the conferees that the provisions of the Norris-LaGuardia Act should be inapplicable to 301 suits, they would have expressly so drafted 301; the elimination of such a provision, which was definitely under consideration, can only mean it was not their intention to include injunctions within the scope of the word, "suits". The Committee of Conference report, House Report No. 510, June 3, 1947 confirms this when it discusses the elimination of 302(e), U. S. Code Congressional Service 80th Congress, First Session, 1947 at page 1172.

In summary, Section 301 is limited to suits for money damages; in no event can it be construed as authorizing an injunction or a suit for specific performance of an arbitration agreement.

QUESTION NO. 3

WHETHER THE DISTRICT COURT HAS JURISDICTION TO DECREE SPECIFIC PERFORMANCE OF AN AGREEMENT TO ARBITRATE SUCH A DISPUTE, DESPITE THE PROHIBITIONS OF THE NORRIS-LAGUARDIA ACT.

The prohibitions of the Norris-LaGuardia Act, 47 Stat. 70, (1932), 29 U.S.C. S 101 et seq., do not permit a District Court to decree specific performance of an agreement to arbitrate contained in a collective bargaining agreement. The provisions of Section 7 are clear and unequivocal.

> "Sec. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing . . ."

The exceptions are clear and do not apply in the present case. No ambiguity exists as to the meaning of Section 7 and so there is no need for interpretation.

It was Congress' desire to keep the courts out of labor relations except in cases "involving violent or destructive acts". The First Circuit Court in *Local 205, U.E. v. General Electric Company* (1956) 233 F. 2d 85 now attempts to carve out another exception, viz.—cases involving orders to compel arbitration.

One of the reasons for the Norris-LaGuardia Act was the judicial erosion of the restrictions against injunctions contained in the Clayton Act, 38 Stat. 738 (1914) 29 U.S.C. Sec. 52. The First Circuit Court's effort to except specific performance of arbitration agreements from the provisions of Section 7 of Norris-LaGuardia represents just such another case of judicial erosion.

The instant case falls squarely within the interdictions of Section 7 of the Norris-LaGuardia Act.

QUESTION NO. 4

WHETHER THE UNITED STATES ARBITRATION ACT, 9 U.S.C. SEC. 1 ET SEQ. IS APPLICABLE TO AN AGREEMENT TO ARBITRATE IN A COLLECTIVE BARGAINING AGREEMENT.

If the United States Arbitration Act is applicable to an agreement to arbitrate future disputes in a collective bargaining agreement, the District Court can enforce such arbitration provision only if the jurisdictional requirements of Section 4 of the Arbitration Act are met.

The plain provisions of Section 4 require the party who is aggrieved by failure, neglect or refusal of the other party to arbitrate under a written agreement for arbitration and

who desires to enforce the arbitration provisions, to petition the District Court which, *save for such agreement, would have jurisdiction under Title 28* in a civil action . . . of the subject matter of a suit arising out of the controversy between the parties. In other words, jurisdiction must be bottomed on Title 28.

In this case the jurisdictional requirements of Title 28 (as required by Section 4 of the Arbitration Act) have not been met and, therefore, the District Court was without jurisdiction to enforce the arbitration provisions of the collective bargaining agreement in the case at bar.

There is nothing in the Arbitration Act, and specifically in Section 4 thereof, which permits Title 29 jurisdiction to be substituted for Title 28 jurisdiction and specifically nothing in the Act which grants jurisdiction to enforce an arbitration provision, where the jurisdiction of the Court is bottomed on Section 301 of the Labor Management Relations Act. In this case the jurisdiction of the District Court is bottomed squarely on Section 301 of Title III of the Labor Management Relations Act of 1947, 29 U.S.C. Sec. 185.

Congress has not yet seen fit to amend Section 4 of the Arbitration Act to provide jurisdiction to enforce an agreement for arbitration when the jurisdiction of the District Court is grounded on Section 185 of *Title 29* and therefore the District Courts of the United States do not have jurisdiction to enforce arbitration provisions in a collective bargaining agreement until Sec. 4 of the Arbitration Act is amended or the right is spelled out by amendment to Section 301.

It seems reasonably certain, therefore, that Congress has not willed that the provisions of the Arbitration Act should apply to collective bargaining agreements.

The only appellate Federal Court which had considered the exclusionary clause in Section 1 and ruled on the question prior to the codification of the Arbitration Act had decided that the Act was not applicable to a collective bargaining agreement. *Gatliff Coal Co.* v. *Cox*, 6 Cir. 1944, 142 Fed. 2nd 876. While Congress would not be controlled by such an interpretation by a Federal Court of Appeals, it is reasonable to suppose that Congress had that interpretation in mind and did not see fit to change it when it enacted Sec. 185 of Title 29.

The legislative history of the Arbitration Act indicates that Congress intended to exclude from its operation all labor disputes. The legislation was drafted and sponsored by the American Bar Association and was in charge of its committee on Commerce, Trade and Commercial Law whose chairman testified before the Sub-committee of the Judiciary Committee, "It is not intended that this shall be an act referring to *labor disputes* at all." and suggested an amendment to clarify this intent, Hearings before Subcommittee of the Committee on Judiciary on S. 4214, 67th Cong., 4th Sess. 9 (1923). The suggested amendment excluded contracts of employment of seamen or any class of workers engaged in foreign or interstate commerce.

The exclusionary clause in Section 1 as finally enacted is substantially in the words suggested by the sponsors to clarify the intent that the Arbitration Act was intended to cover commercial disputes and was not to have application to *labor* disputes at all.

Hence (a) whether the collective bargaining agreement is held to be a contract of employment as held in *Lincoln Mills* v. *Textile Workers Union*, 5 Cir. 1956, 230 F. 2d 81 or not to be a contract of employment within the meaning of Sec. 1 of the Arbitration Act as held in *Local 205 U. E.* v.

General Electric Company, 1 Cir. 1956, 233 F. 2d 85, and (b) whether or not the employees here involved were actually engaged in the transportation industry or merely in the production of goods to be shipped in interstate commerce (See *Tenney Engineering, Inc.* v. *United Electrical R. & M. Workers*, 3 Cir. 1953, 207 F. 2d 450), the Arbitration Act cannot be made applicable to the labor dispute involved in this case until Congress has by legislative amendment enunciated the public policy that it now favors the application of the Arbitration Act to labor disputes and enforcement under the Arbitration Act of arbitration provisions in collective bargaining agreements.

The legislative history further indicates that the exclusion of contracts of employment in Sec. 1 was inserted at the behest of a labor union—International Seamen's Union—in order that the arbitration agreements in the maritime industry would not be specifically enforceable in the Federal Courts. At that time the only contracts involving seamen which contained arbitration clauses were collective bargaining contracts and not individual hiring contracts (see Note on Enforceability Under the U. S. Arbitration Act, 63 Yale L. J. 729, 731). Therefore, the words "contracts of employment" were intended to encompass collective bargaining agreements; *Signal-Stat Corp.* v. *Local 475, U.E.*, 2 Cir. 1956, 235 F. 2d 298. It is clear, therefore, that Congress intended that the Arbitration Act should not be applicable to collective bargaining agreements.

Had Congress intended, by Section 185 of Title 29, of the Labor Management Relations Act, to make the Arbitration Act applicable to collective bargaining agreements, and to provide jurisdiction in the District Court to enforce the arbitration provisions in such agreements, a simple amendment to Section 4 of the Arbitration Act would have accomplished that purpose or it could have been spelled out in Section 301.

QUESTION NO. 5.

WHETHER A UNION MAY PROSECUTE, BY WAY OF ARBITRATION PROCEDURE IN A COLLECTIVE BARGAINING AGREEMENT, THE PECULIARLY PERSONAL RIGHTS OF INDIVIDUAL EMPLOYEES TO RECOVER VACATION PAY, AND JUDICIALLY COMPEL ARBITRATION FOR THAT PURPOSE.

The specific matter raised under this question is the right of the union, as a party to a collective bargaining agreement, to enforce, by a judicially ordered arbitration, under the authority of Section 301, the individual rights of the employees to recover vacation pay and other fringe benefits to which the union claims the employees are entitled under the provisions of the collective bargaining agreement between the union and the employer.

It is settled by the Westinghouse Case that the union could not enforce, in an action brought by the union under 301 "the uniquely personal right of an employee for whom it has bargained to recover compensation for services rendered to his employer".

May the same result be accomplished by the union under 301 by a judicial enforcement of the arbitration provisions of the collective bargaining agreement, the ultimate purpose of which is to enforce payment, to the individual employees concerned, of the compensation by way of vacation pay or other fringe benefits to which they may claim to be entitled?

If, by the provisions of Section 301, Congress did not grant to a union the right to enforce claims to recover compensation for services rendered by employees for whom it had bargained, then it necessarily follows that Congress, by Section 301, did not intend to confer upon the union the

right to enforce, by a judicially ordered arbitration, under the authority of Section 301, those same uniquely personal rights of the individual employees to recover from the employer vacation pay and other fringe benefits which the individual employees claim to be entitled to receive when their respective employments were terminated in the course of a good faith plan of the employer to cease operations and close down and dispose of the mill property because of continued heavy losses. *Textile Workers Union* v. *Williamsport Textile Corp.*, D.C. M.D. Penna, 136 F. Supp. 407.

The decision of the Court of Appeals affirming the decree of the District Court, directing arbitration, is contrary to the decision of this Court in Westinghouse, and contrary to the interpretation of the Westinghouse case made by the Court of Appeals on the same day in *Local 205* v. *General Electric Company*, 2 Cir. 1956; 233 F. 2d 85.

In that case the Court stated at page 100 that the effect of the Westinghouse holding reflected in all the opinions of the majority justices "was to eliminate from 301 jurisdiction a complaint by a union that involves no more than a cause of action which is 'peculiar in the individual benefit' or 'the uniquely personal right of an employee,' or which 'arises from the individual contract between the employer and employee' ". And at page 101, "It seems to us therefore that that decision is to be interpreted as denying jurisdiction over a controversy only where the union is seeking a remedy, usually a judgment for damages which the individual could enforce in a suit on his personal cause of action."

Here the termination of the employment of the individual employees is the breach of the collective bargaining agreement alleged by the union in its complaint R 13-14

If the breach alleged did, in fact, occur, then a cause of action immediately arose in favor of the individual employee for the recovery of the damage suffered in the loss of the vacation pay and the other fringe benefits which were a part of the employee's compensation under his individual contract of employment and which were claimed to have been lost by reason of violation of the collective bargaining agreement.

QUESTION NO. 6

The Appealability of an Order Granting Specific Performance of an Arbitration Covenant.

The ruling of the District Court granting specific performance of the arbitration provisions of a collective bargaining agreement is appealable under 28 U.S.C.A. Sec. 1291.

The only relief prayed for in the complaint as finally amended was an order directing specific performance of the arbitration provisions of the collective bargaining agreement.

The complaint was not auxiliary to a main proceeding and did not pray for a stay of a main proceeding, pending arbitration. The complaint and prayer for arbitration was the main proceeding.

Hence, the order of the court directing specific performance of the arbitration provisions of the collective bargaining agreement was the granting of the only relief demanded in the complaint and was a final decree, appealable under Section 1291, and the Court of Appeals was right in determining that the order for arbitration was a final appealable decree under Section 1291, where the court granted the

only relief demanded in the complaint. *Krauss Bros. Lumber Co.* v. *Louis Bossert & Sons, Inc.* 2 Cir. 1933, 62 F. 2d 1004, *Continental Grain Co.* v. *Dant & Russell, Inc.*, 9 Cir. 1941, 118 F. 2d 967.

It is obvious that the Second Circuit did not consider that in *Stathatos* v. *Arnold Bernstein SS Corp.*, 2 Cir. 1953, 202 F. 2d 525, it was overruling its prior decision in the Krauss Bros. case, because that case is not mentioned either in the decision of Chief Judge Clark or the dissenting opinion of Judge Frank.

The rule of *Baltimore Contractors, Inc.* v. *Bodinger*, 348 U.S. 176 (1955) or *Morgantown* v. *Royal Insurance Co., Ltd.* 337 U.S. 254, are not applicable to this case, as each involved an order or ruling of the court on a motion for stay pending arbitration. The ruling or order was simply a ruling as to the manner in which the court would try one issue in the case pending before it.

An order directing specific performance of the arbitration provisions of a collective bargaining agreement was the granting of an injunction, and, even if held to be interlocutory, was appealable under 28 U.S.C.A. 1292 (1).

CONCLUSION

As the District Court did not have jurisdiction or authority under Section 301 of the Labor Management Relations Act of 1947 to grant the relief of specific performance of the arbitration clauses of the collective bargaining agreement as held by the District Court and as the District Court did not have jurisdiction under Section 301 to grant the relief of specific performance of the arbitration clauses of the collective bargaining agreement in accordance with the provisions of Section 4 of the United States Arbitration

Act as held by the Court of Appeals, the decision of the Court of Appeals affirming the Decree of the District Court and the Decree of the District Court directing the enforcement of the arbitration clauses in the collective bargaining agreement in this case should be reversed and the complaint dismissed.

Respectfully submitted,

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Counsel for Petitioner.

APPENDIX A

STATUTES INVOLVED

LABOR MANAGEMENT RELATIONS ACT, 1947, 61 Stat. 156, 29 U.S.C. Sec. 185.

SEC. 301 (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the Courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of action and proceeding by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his

acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

UNITED STATES ARBITRATION ACT, 43 STAT. 883, re-enacted 61 Stat. 669, 9 U.S.C. Secs. 1-14, as amended by Act of September 3, 1954, 68 Stat. 1233.

"Maritime transactions" and "commerce" defined; exceptions to operation of title

SEC. 1. "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Validity, Irrevocability, and Enforcement of Agreements to Arbitrate.

SEC. 2. A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Failure to Arbitrate Under Agreement; Petition to United States Court having Jurisdiction for Order to Compel Arbitration; Notice and Service thereof; Hearing and Determination.

SEC. 4. A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order

summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

NORRIS-LAGUARDIA ACT, 47 STAT. 71, 29 U.S.C. SEC. 107.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or willing to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restrain-

ing order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant, and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

65 STAT. 726, 28 U.S.C. Section 1291. Final decisions of District Courts.

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

65 STAT. 726, 28 U.S.C. Section 1292. Interlocutory decisions.

The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands or of the judges thereof, granting continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;